IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.1135 OF 2005

Mr.Bhiku Sitaram Mali
(Bansode) ..Petitioner

Vs.

Mr.Bapurao Ganpati Mali
(Bansode) and Anr. ..Respondents

....

Mr.Dilip Bodke for Petitioner

....

CORAM : B.H.MARLAPALLE,J.

DATE : APRIL 20,2005

P.C.:

1. Heard Mr.Bodke, the learned counsel for the Petitioner who is the defendant in RCS No. 57 of 1997. In the said suit, application at Exh.62 for amendment of the written statement under Order VI Rule 17 of the CPC was filed and by the impugned order dated 31.1.2005 the said application has been rejected.

2. Though the trial Court has, inter alia, stated that in view of the amended provisions of Order VI Rule 17 of the CPC, belated application could not be entertained, the fact remains that the written statement was filed at Exh.20 sometimes in 1998 and

after this order, amendment application was moved. RCS No. 218 of 1987 has already been restored to the file and final decision is still awaited and recording of evidence of the parties was already over in RCS No.57 of 1997. In addition, the Petitioner in his written statement had clearly stated that this subject 'babhul tree' is located in his agriculture land bearing Block No.574.

3. The reasoning given by the trial Court in support of the impugned order does not call for any interference.

4. However, the learned counsel for the Petitioner seeks leave to withdraw the petition with liberty.

5. Petition is allowed to be withdrawn with liberty as is available in law.

[B.H.MARLAPALLE,J.]